

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

March 29, 2004

IN RE:

**JOINT APPLICATION OF NOW ACQUISITION
CORPORATION FOR AUTHORITY TO ACQUIRE
CERTAIN ASSETS OF NOW COMMUNICATIONS, INC.**

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**DOCKET NO.
03-00454**

**ORDER APPROVING SALE OF ASSETS AND
CUSTOMER NOTIFICATION LETTER**

This matter came before Chairman Deborah Taylor Tate, Director Pat Miller, and Director Ron Jones of the Tennessee Regulatory Authority (the "TRA" or "Authority"), the voting panel assigned to this Docket, at a hearing held on February 26, 2004 for consideration of the *Joint Application for Approval to Acquire Assets* ("*Application*") filed by Now Acquisition Corporation ("NAC") requiring TRA approval under Tenn. Code Ann. § 65-4-112 and TRA Rule 1220-4-2-56(2)(d)(2)

Statutory and Regulatory Framework

TRA approval of mergers between public utilities holding a certificate of public convenience and necessity ("CCN") in the State of Tennessee is required under Tenn. Code Ann. § 65-4-112(a), which provides as follows:

No lease of its property, rights, or franchises, by any such public utility, and no merger or consolidation of its property, rights and franchises by any such public utility with the property, rights, and franchises of any other such public utility of like character shall be valid until approved by the [A]uthority, even though power to take such action has been conferred on such public utility by the state of Tennessee or by any political subdivision of the state.

Further, when a customer base is transferred from one telecommunications service provider to another, TRA Rule 1220-4-2-.56(2)(d) provides that sufficient notice has been given to affected customers when the following criteria has been met:

2. A notification letter, pre-approved by the Authority, shall be mailed by U.S. First Class Postage by the telecommunications service provider being acquired to its customers describing the customer transfer and explaining that the customers' local or long distance service will be transferred to the acquiring telecommunications service provider by a certain date unless the customer selects another telecommunications service provider. This customer notification shall be mailed to the customers no less than thirty (30) days prior to the actual customer transfer. The notification letter required by the FCC may be used for the notification purposes of this part. The Authority may waive the thirty (30) day notice requirement of this part for good cause shown.
3. The acquiring telecommunications service provider agrees to pay any fees charged to the customer associated with changing service to the acquiring telecommunications service provider. The notification letter required in 1220-4-2-.56(2)(d)(2) shall inform the customer of this provision.
4. The acquiring telecommunications service provider agrees to provide to the affected customers a thirty (30) day written notice of any rate increase that may affect their service up to ninety (90) days from the date of the transfer of customers. The notification letter mentioned in 1220-4-2-.56(2)(d)(2) shall inform the customer of this provision.

Background

Now Communications, Inc. ("NOW"), a Mississippi Corporation, was granted a CCN to provide facilities-based and resold local exchange, exchange access, and interexchange telecommunications services in the state of Tennessee on December 3, 2001 in TRA Docket No. 01-00878. On March 4, 2003, NOW filed a petition for reorganization under Chapter 11 of the United States Bankruptcy Laws in the United States Bankruptcy Court for the Southern District of Mississippi. Under the supervision of the Bankruptcy Court, NOW has entered into an asset purchase agreement with NAC for the sale of all of its assets associated with the provision of telecommunications services, including its customer base.

NAC is a Delaware Corporation wholly-owned by BiznessOnline.com d/b/a VeraNet Solutions ("Biz") which is authorized to provide telecommunications services in ten states. MGC Capital Corporation ("MGC") is the majority shareholder of Biz and is also a secured creditor of NOW. NAC proposes to enter into the asset purchase agreement with NOW as an assignee of MGC and, in pursuance of this agreement, was granted a CCN by the TRA on February 19, 2004 in Docket No. 03-00455 in order to provide facilities-based and resold local exchange, exchange access, and interexchange telecommunications services in the state of Tennessee.

The Application

NAC filed this *Application* with the TRA on July 15, 2003, seeking expedited approval of the acquisition of NOW's Tennessee assets by NAC.¹ In support of this *Application*, NAC contends that it is currently operating in nine other states; that it has the necessary financial, technological, and managerial expertise to operate a public utility and provide telecommunications services in the state of Tennessee; and that the asset purchase will create a more financially and technologically robust business that will benefit both customers and the competitive marketplace. NAC states that its purchase of the telecommunications operations of NOW will be completed without interruption of service to NOW's customers and that the transition will be, essentially, seamless to customers and will result in no change in the rates, terms, or conditions of service, except for the name under which services will be provided.² Completion of the transaction, including transfer of the customer base, was initially scheduled for December 31, 2003 and is now expected to occur on March 10, 2004.

In order to notify NOW customers about the proposed sale of assets and the resulting transfer of customer base, NAC also submitted a customer notification letter for TRA approval. TRA Rule

¹ On September 12, 2003, BellSouth Telecommunications, Inc. ("BellSouth") filed a petition to intervene in this Docket pursuant to motions pending before the Bankruptcy Court having jurisdiction over NOW's reorganization proceeding. Consideration of the *Application* pending in TRA Docket No. 03-00454 was, essentially, stayed to allow these motions to be addressed by the Bankruptcy Court. Pursuant to a settlement reached between NOW and BellSouth in the bankruptcy proceedings, BellSouth withdrew its motion to intervene in this Docket on January 5, 2004.

1220-4-2-.56(2)(d) provides that, in case of a transfer of customer base from one telecommunications service provider to another, the TRA may deem that the provider whose customer base is being acquired has met the notification requirements of the TRA's anti-slamming rules by sending a letter to its affected customers notifying them of the change in provider. This rule requires TRA approval of the letter and, by implication, of the transfer of customer base. In order to comply with the notification requirements of the Federal Communications Commission and the majority of other states, a notification letter was sent to NOW's customers on November 26, 2003 in anticipation of the December 31, 2003 transfer. This letter complied with all TRA requirements except in the following respects: although it informed customers that the transfer would not affect existing rates, it did not mention that, for ninety days following the transfer, customers would receive a thirty-day notice of any rate increase; and the names and/or logos of both NAC and NOW were included on the letterhead but both names and/or logos may not have also appeared on the envelope.

The February 26, 2004 Hearing

At the February 26, 2004 Hearing, Patrick Crocker and Scott Kellogg participated telephonically on behalf of NAC. Upon request from the Directors, Mr. Crocker committed NAC to providing its customers with a thirty-day notice of any rate increase implemented within ninety days of the transfer, even though this language was omitted from the notification letter mailed on November 26, 2003. Mr. Kellogg agreed that all previously-existing carrier freezes would be reinstated by NAC at no charge to customers following the transfer. Mr. Kellogg represented to the Directors that NOW has not acquired any new customers since November 26, 2003 but agreed to provide a notification letter to any customer that may have been acquired since that time. For this purpose, the Directors agreed to waive the thirty-day notice requirement of TRA Rule 1220-4-2-.56(2)(d)(2). Based upon the representations of NAC, the Directors voted unanimously to approve the notification letter mailed to the customers of NOW on November 26, 2003 and, by implication,

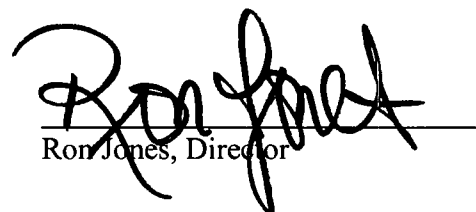
the transfer of customer base. The Directors also voted unanimously to approve the sale of assets pursuant to Tenn. Code Ann. § 65-4-112 and the cancellation of NOW's CCN following notice to the TRA of the completion of the proposed transaction.

IT IS THEREFORE ORDERED THAT:

1. The sale of assets as described in the *Application* and discussed herein is approved.
2. The customer notification letter mailed on November 26, 2003 is approved.
3. The transfer of customer base as described in the *Application* and discussed herein is approved.
4. Any customers acquired by NOW after November 26, 2003 shall be informed of the impending transfer of customer base by notification letter consistent with TRA requirements. For this purpose, the thirty-day notice requirement of TRA Rule 1220-4-2- 56(2)(d)(2) is hereby waived.
5. NAC shall provide a thirty-day notice to its customers of any rate increase within ninety days of the transfer of customer base.
6. All carrier freezes in existence prior to the customer base transfer shall be reinstated by NAC at no charge to its customers following the transfer.
7. NAC shall notify the TRA of the completion of the proposed transaction at which time NOW's CCN shall be cancelled.


Deborah Taylor Tate, Chairman


Pat Miller, Director


Ron Jones, Director